

DEPT OF TRANSPORTATION
DOCKETSU.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

JUN -1 A 9 33

IN THE MATTER OF

CHARINA FLORES

Respondent

FAA Docket No. CP08WP0009
DMS No. FAA-2008-0512
-----LITIGATION DIVISION
AGC-400

2009 JUN 15 PM 2:28

RECEIVED

Tuesday
May 26, 2009Courtroom 18-206 B
U.S. District Court
Western District of Washington
700 Stewart Street
Seattle, WA 98101

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE RICHARD C. GOODWIN,
United States Administrative Law Judge**RECEIVED**
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HEARING DOCKET**NEAL R. GROSS**
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APPEARANCES:

On Behalf of the Respondents:

(None)

On Behalf of the Agency, Department of
Transportation:

SCOTT R. MORRIS, ATTORNEY
Federal Aviation Administration
Office of Regional Counsel,
Northwest Mountain Region
1601 Lind Avenue, S.W.
Renton, WA 98057
(425) 227-1417

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<u>Exhibit Nos.</u>	<u>Document</u>	<u>MARK</u>	<u>RECD</u>
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C-2	DOT/FAA National Policy Order 2150.3B	7	8

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P-R-O-C-E-E-D-I-N-G-S

(9:30 a.m.)

JUDGE GOODWIN: This is the case of Ms. Flores, DMS No. FAA-2008-0877 (sic). It is now 9:30. We're in Courtroom 18-206 B, 700 Stewart Street, Seattle, Washington.

Counsel for the FAA, would you identify yourself for the record, please?

MR. MORRIS: Yes, sir. My name is Scott R. Morris. I'm an attorney with the Northwest Mountain Region Office of Regional Counsel, 1601 Lind Avenue, Southwest, Renton, Washington, 98057.

JUDGE GOODWIN: The reason that the Court didn't start until 9:30 is we were waiting for the arrival of Ms. Flores.

Counsel, have you had any communication with Ms. Flores in the last couple of weeks?

MR. MORRIS: None, sir.

JUDGE GOODWIN: Okay. And to the best of my knowledge, I don't have the file,

1 but I have no reason to believe that she's not
2 been served. She has responded in the past to
3 some pleadings. Her first name is C-h-a-r-i-
4 n-a.

5 Counsel, did she ever respond to
6 my order requiring her to provide discovery?

7 MR. MORRIS: I don't believe she
8 has, sir, and I believe as a result of that,
9 you issued the summary judgment.

10 JUDGE GOODWIN: Sanctions, right,
11 or sanctioning Respondent. The Court issued -
12 - I don't have the serve date, but the Court
13 issued an order sanctioning the Respondent.
14 And I found that -- the Court found that the
15 Respondent is deemed to have admitted the
16 Complainant's request for admissions set forth
17 in Complainant's first set of discoveries,
18 excepting that the amount of the civil penalty
19 was not determined.

20 So, counsel, why don't we -- I'm
21 going to find it is now approaching 9:35. Ms.
22 Flores is not in Court. If there were a

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1 reason, I would have gotten a call from my
2 attorney advisor. There is none or I assume
3 that Mr. Morris' office would have contacted
4 him. So I'm going to find that the -- Ms.
5 Flores by her failure to appear for the
6 hearing, which she requested, that she's
7 deemed to have admitted all of the allegations
8 set forth in the complaint; and I'm going to
9 find that she has, by her actions, withdrawn
10 her request for a hearing; and I will -- if
11 she shows up at the last minute, I will allow
12 her to testify on limited issues; but I will
13 in effect find a default against her.

14 So did you want to put on
15 testimony or evidence as to penalty?

16 MR. MORRIS: I do, sir. And
17 again, just as a matter of clarification, I
18 was going to do this
19 -- might as well do it on the record. I move
20 to amend the complaint as far as the sanction
21 itself. The first amended complaint that was
22 submitted with the Court was for 4,000, and

1 looking at it, I believe it should be amended
2 to \$3300.

3 JUDGE GOODWIN: All right.

4 MR. MORRIS: Subject to that, I
5 have no other --

6 JUDGE GOODWIN: Hearing no
7 objection, the motion to amend the complaint,
8 the penalty from 4,000 to \$3300, is granted.

9 MR. MORRIS: A couple of
10 preliminary matters. I would offer for the
11 Court -- Your Honor, at this time I offer C-1
12 for identification to C-1 and C-2 for
13 identification to C-2. C-1 is a declaration
14 of the United flight attendant that was
15 sitting behind the Respondent at the time of
16 the incident, and C-2 is the administrative
17 s a n c t i o n g u i d a n c e t a b l e .

18 (Whereupon, the above-referred
19 documents were marked as
20 Complainant's Exhibit Nos. C-1 and
21 C-2 for identification.)

22 JUDGE GOODWIN: Okay. And as I've

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1 indicated to you in the past, you don't have
2 to submit the FAA sanction table, but it
3 doesn't upset the Court whether you do or
4 whether you don't. I understand why you do,
5 and frankly, we'd probably do the same thing.

6 The Administrator's C-1 for
7 identification, hearing no objection, is
8 received in evidence as Complainant's 1, and
9 I do so by crossing out ID and putting the
10 date in here. C-2 for identification is
11 received into evidence as C-2.

12 (Whereupon, the above-referred
13 documents were admitted into
14 evidence as Complainant's Exhibit
15 Nos. C-1 and C-2.)

16 MR. MORRIS: And one more, sir. I
17 just need one second, wherever I put it.

18 (Pause.)

19 Well, that's all right. I don't
20 have it.

21 Sir, I'll go ahead and call
22 Inspector Cox. And if you would stand and the

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1 Judge will swear you in.

2 WHEREUPON,

3 CHARLES F. COX

4 was called as a witness and, having been first
5 duly sworn, assumed the witness stand, was
6 examined and testified as follows:

7 JUDGE GOODWIN: Please be seated.
8 State your name for the record and spell your
9 first and last name.

10 THE WITNESS: Charles Cox, C-h-a-
11 r-l-e-s, C-o-x.

12 DIRECT EXAMINATION

13 BY MR. MORRIS:

14 Q Mr. Cox, do you work for the FAA?

15 A Yes, I do.

16 Q What do you do for the FAA?

17 A I'm an Aviation Safety Inspector
18 and a Regional Technical Specialist.

19 Q Okay. And would you briefly
20 summarize your aviation background and
21 experience to the Administrative Law Judge?

22 A Been in aviation for approximately

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1 35 years. I have 19 years with the FAA Flight
2 Standards office as an Aviation Safety
3 Inspector.

4 Q What are your certificates and
5 ratings?

6 A An airline transport pilot rating.
7 I have a flight instructor rating. I'm type
8 rated in the Dash-8 and the EMB 120 aircraft
9 and airplane multi-engine land, single-engine
10 land.

11 Q Okay. As part of your duties, are
12 you required to review case files that come
13 through the Regional Flight Standards office?

14 A Yes. Currently I review
15 enforcement cases from all of our -- the
16 Flight Standards District Office is located in
17 the Northwest Mountain Region -- and to
18 determine that the cases are valid, have
19 sufficient evidence and to determine an
20 appropriate sanction for each case.

21 Q Okay. And under FAA Order
22 2150.3B, is it not, in fact, the regional

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1 specialists of the Regional Flight Standards
2 office that makes the recommendations as far
3 as the sanction?

4 A Yes, we do.

5 Q Okay. Now, the case of
6 Administrator versus Charina Flores, that did
7 not come from the Northwest Mountain Region;
8 did it?

9 A No, it did not.

10 Q And where did it come from?

11 A I believe the Southwest Region.

12 Q Okay. Or Western Pacific?

13 A Western Pacific.

14 Q Okay.

15 A Okay.

16 Q Have you reviewed this file in
17 preparation for your testimony?

18 A Yes, I have.

19 Q Okay. And I want to talk a minute
20 about this file itself.

21 Ms. Flores has been found in
22 violation of three specifications,

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1 specifically 121.306, which is the portable
2 electronic device; 121.137(g) for failing to
3 have seat belts; and 121.317(k) for failing to
4 follow the instructions of the flight
5 attendants.

6 Do you recall that?

7 A Yes, I do.

8 Q Okay. What does the
9 Administrator's sanction guidance provide for
10 these types of violations?

11 A Two of them the Administrator
12 sanction guide recommends minimum to a
13 moderate civil penalty and a third maximum
14 civil penalty.

15 Q Okay. And the portable electronic
16 device is a maximum civil penalty?

17 A Yes, it is.

18 Q In your review of the file, were
19 there any particular factors that you
20 considered that were aggravating that would
21 warrant a maximum penalty for the other two
22 violations?

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1 A Yeah, definitely. In reading the
2 statements of the off-duty flight attendant
3 and also the on-duty flight attendant, Ms.
4 Flores' actions endangered the safety of all
5 the passengers on board the aircraft in that
6 she was not seat belted during the time of
7 landing and also the fact that she was using
8 a cellular phone for a camera, which can --
9 does have the capability of interfering with
10 the flight instruments on the flight deck in
11 a critical phase of flying.

12 Q That's my next question. Is
13 landing a critical phase of flight?

14 A Yes. While landing is mostly a
15 visual event for the pilot at that stage right
16 near touchdown, our current aircraft have
17 electronic flight instruments, and they have
18 been known to have some electronic devices
19 interfere with those displays. And although
20 I don't know the extent that this particular
21 cell phone would have had on that and we don't
22 -- haven't alleged that, there have been cases

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1 where it has been a problem in endangering the
2 entire flight.

3 Q Okay. From your review of the
4 flight, were you able to determine was a
5 flight attendant required to leave her duty
6 station while the aircraft was still on the
7 roll during the landing?

8 A Yes. The on-duty flight
9 attendant, just after touchdown, did have to
10 unbelt her seat -- unbuckle her seat belt and
11 go to the back of the aircraft where the
12 passenger was seated and handle the situation
13 while the aircraft was still moving.

14 Q Okay. Did she actually interfere
15 with that flight attendant's duties?

16 A The flight attendant at the time
17 should have been remained in her seat with a
18 seat belt fastened and just using the intercom
19 to address the passenger issues, which she did
20 attempt, but that didn't work. So she was
21 forced to unbelt herself and go attend to the
22 situation.

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1 Q Okay. As a result of the
2 confrontation between the uniformed United
3 flight attendant that was sitting in the next
4 row, either in front or in back of her, I
5 forget, did she make any representations about
6 her relationship with any governmental agency?

7 A Yes. According to that flight
8 attendant, the defendant identified herself or
9 claimed she was representing the FAA and was -
10 - threatened the off-duty flight attendant's
11 employment.

12 Q Okay. In your review of the file
13 in looking at the Administrator's sanction
14 guidance, is the \$3300 requested within the
15 Administrator's sanction guidance range?

16 A Definitely.

17 Q Is it a gift?

18 A Definitely. Regulations that were
19 not specifically cited or brought forward in
20 the case were the endangerment of the people
21 around and that would have started the
22 sanction guide at 5,000 to 25,000. So 3,300

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1 is certainly a gift in my opinion.

2 MR. MORRIS: Thank you, sir.
3 Nothing further.

4 JUDGE GOODWIN: You may step down.
5 You're instructed not to discuss your
6 testimony with anybody prior to the conclusion
7 of the hearing.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. MORRIS: Sir, that's the
11 government's case for sanction.

12 JUDGE GOODWIN: Respondent not
13 being present, hearing nothing from the
14 Respondent, I draw your attention to the case
15 of Shelly Louise Conger, which is DMS FAA
16 2004-20530. That was a case where the
17 Respondent, Shelly Conger, on a flight of
18 January 6th, 2004, was a passenger on American
19 Airlines Flight 823 operating nonstop from
20 Miami to Los Angeles.

21 I won't go into a lot of what
22 transpired in that case, but the essence of

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1 that case was that the -- Ms. Conger had a
2 verbal disagreement with a flight attendant.
3 The aircraft was a 767 and Ms. Conger, while
4 the seat belt sign was seated, followed the
5 flight attendant, got from her seat while the
6 fasten seat belt sign was on, followed the
7 flight attendant through the forward galley
8 down the A side of the aircraft, and the Court
9 concluded that she physically touched the
10 flight attendant. Ms. Conger's behavior
11 caused at least several flight attendants,
12 including the lead flight attendant to be
13 distracted from their job in order to get Ms.
14 Conger to return to her seat.

15 In this case, the un rebutted
16 testimony is that the flight attendant in full
17 uniform sitting behind -- I'm sorry, sitting
18 in front of the Respondent observed behavior
19 where the Respondent appeared to be drinking
20 alcohol. She was quite loud. The witness was
21 aware that there had been an announcement to
22 turn off all portable electronic devices, but

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1 the five minutes before landing, the witness
2 heard a phone ring that belonged to the girl
3 in 6A, who proceeded to answer the call, talk
4 to the caller. The witness, who was in full
5 uniform, turned to the Respondent and told her
6 that she had to turn off her cell phone.

7 The Respondent not only did not
8 turn off her cell phone but proceeded to
9 escalate the situation, made another call,
10 according to the facts in C-1, which is
11 received in evidence. The witness again told
12 the Respondent to sit down. At that point the
13 Respondent pulled out a camera, started taking
14 pictures of the interior of the cabin,
15 apparently while standing, and then threatened
16 the witness by indicating that the Respondent
17 worked for the FAA.

18 As I said in the Conger case, it's
19 important to note that flight attendants are
20 not waiters. The flight attendant's primary
21 responsibility is to assure the safety and
22 security of passengers. Attendants must

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1 always be fully ready to deal with matters
2 which pose risk to the safety and security of
3 the flight, such as turbulence, rapid cabin
4 decompression or worse. If a flight attendant
5 has to deal with other situations, they're not
6 in a position to perform their duties.

7 While Ms. Flores did not assault
8 this flight attendant, I think her behavior
9 rises to the same level as that in the Conger
10 case. Ms. Flores' conduct was irresponsible,
11 at the least. I find that the flight
12 attendants in question in this case, their
13 duties were materially compromised by the
14 conduct of the Respondent. Certainly while in
15 approach and while roll-out, anyone who stands
16 up is a danger to everyone else in the
17 aircraft and, in fact, can become a projectile
18 if, heaven forbid, something untoward happens.

19 As I said in the Conger case, we
20 live in a safety- and security-attuned
21 environment. On account of aircraft
22 hijackings leading to the loss of 3,000

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1 lives in 2001, that environment may not be
2 more sensitive than aboard operating an
3 aircraft -- an operating aircraft. It's
4 imperative that airline passengers refrain
5 from interfering with crew responsibilities
6 whether they are on duty or off duty,
7 regardless of personal circumstances.

8 In the Conger case, I said in a
9 footnote that had the FAA asked -- in the
10 Conger case, I awarded the civil penalty of
11 \$6,100 and I said in a footnote that had the
12 Federal Aviation Administration asked for
13 more, I would have given more, and I adopt
14 that reasoning in this case. I find Ms.
15 Flores' conduct is reprehensible, she's a
16 danger to herself, she's a danger to those
17 around her.

18 The FAA has asked for a sanction
19 of \$3300, which I find is more than reasonable
20 under the circumstances, and I will opine in
21 dicta, as I did in the Conger case, and had
22 the FAA asked for more, the Court would have

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1 given it serious consideration.

2 So I find for the Federal Aviation
3 Administration. I award a civil penalty of
4 \$3300 and I will memorialize the decision in
5 writing and issue it and publish to the
6 Respondent in due course.

7 Are there any other matters in
8 this case, Mr. Morris?

9 MR. MORRIS: No, sir.

10 ADMINISTRATIVE JUDGE: Okay.
11 We'll go off the record.

12 (Whereupon, the foregoing matter
13 was adjourned at 9:55 a.m.)
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CERTIFICATE

This is to certify that the foregoing transcript
in the matter of: Charina Flores

Before: US Department of Transportation
Office of Hearings

Date: May 26, 2009

Place: Seattle, WA

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

Karen Whelan

Karen Whelan